

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TREMONT REALTY CAPITAL, INC.,

Plaintiff,

v.

PINNACLE GROUP, LLC, ADAMS
CANYON RANCH, LLC, JOHN LANG,
and MICHAEL GRADY,

Defendants.

PINNACLE GROUP, LLC, ADAMS
CANYON RANCH, LLC, JOHN LANG,
and MICHAEL GRADY,

Counterclaim Plaintiffs,

v.

TREMONT REALTY CAPITAL, INC.,

Counterclaim Defendant.

Civil Action No. 04-11853-RGS

**TREMONT REALTY CAPITAL, INC.'S MOTION TO DISMISS
COUNTS I, II, III AND VI OF THE FIRST AMENDED COUNTERCLAIM**

In accordance with Fed. R. Civ. P. 9(b), plaintiff/counterclaim defendant Tremont Realty Capital, Inc. ("Tremont") moves to dismiss Counts I, II, III and VI of the First Amended Counterclaim, dated April 15, 2005. These counts are fraud-based causes of action that are not supported by any allegations which would be sufficient to meet the heightened pleading standards under Rule 9(b). Specifically, the counterclaim complaint

makes no allegation concerning who made any of the allegedly fraudulent representations, when they were allegedly made, or to whom they were allegedly made. Similarly, the counterclaim complaint is devoid of any allegation that attempts to explain why these representations, if made, could be construed as fraudulent. As such, these causes of action are legally deficient, and should be dismissed. This motion is supported by a contemporaneously filed memorandum of law.

Wherefore, plaintiff asks that the Court dismiss Counts I, II, III and VI of the First Amended Counterclaim.

TREMONT REALTY CAPITAL, INC.,

By its attorneys,

/s/ Michael S. Day

James M. Wodarski, BBO# 627036

Michael S. Day, BBO # 656247

Joseph V. Cavanagh, BBO # 657671

Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.

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Dated: May 13, 2005

Rule 7.1(A)(2) Certification

Pursuant to Local Rule 7.1(A)(2), counsel for Tremont certify that they have conferred with counsel for the Counterclaim Plaintiffs and attempted in good faith to resolve the issues surrounding the Counterclaim Plaintiffs' claims.

/s/ Michael S. Day

Michael S. Day

Certificate of Service

I certify that on this day I caused a true copy of this opposition memorandum to be served on Counterclaimants' counsel of record, William J. Hunt, Clark, Hunt & Emery, 55 Cambridge Parkway, Cambridge, Massachusetts 02142, by first class mail.

Dated: May 13, 2005

/s/ Michael S. Day

Michael S. Day